

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEVIN S. LISI,
Plaintiff,

V.

AHERN, INC.,
Defendant.

§
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§
§
§
§

CIVIL ACTION NO. 4:20-cv-3790

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ahern, Inc., Defendant, and files its Notice of Removal and would respectfully show the Court as follows:

I.

Ahern, Inc. is a Defendant in a civil action filed on or about September 2, 2020 in the 164th Judicial District Court of the State of Texas, Harris County, styled *Kevin Lisi v. Ahern, Inc.*, Cause No. 2020-53150. A copy of the petition, pleadings, and Docket Sheet in the State Court action are attached as Exhibit "A." Plaintiff filed suit against Defendant for alleged wrongful termination and is seeking damages as a result of the alleged discharge in breach of employment contract.

II.

Defendant is authorized to do business in the State of Texas. At the time of the incident made the basis of the lawsuit, Defendant was and is a foreign for-profit corporation, incorporated in the State of Nevada with its principal place of business in Las Vegas, Nevada.

III.

Plaintiff filed the State Court action on September 2, 2020 against Defendant seeking damages. Defendant was served with Plaintiff's Original Petition on October 9, 2020. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) in that it is filed within 30 days of receipt of notice the claim was removable and within one year after commencement of the State Court action.

IV.

Removal of this action is proper pursuant to 28 U.S.C. § 1332 (a)(1), 28 U.S.C. § 1332 (c)(1), and 28 U.S.C. § 1441(a), since it is a civil action brought in State Court and the Federal District Courts have original jurisdiction over the subject matter under 28 U.S.C. § 1332(a)(1) based on diversity of citizenship. The matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs and is between citizens of different States. Plaintiff is a citizen of Texas. Defendant is a corporation authorized to do business in the State of Texas at the time of the incident made the basis of this lawsuit and Defendant is a citizen of the State of Nevada with its principal place of business in Las Vegas, Nevada.

V.

Plaintiff did not request a jury in Plaintiff's state court petition.

VI.

Attached to this Notice of Removal are the following:

1. List of Counsel;
2. Copy of State Court Docket Sheet;
3. Plaintiff's Original Petition;
4. Defendant's Original Answer; and

5. Defendant's Certificate of Discovery.

WHEREFORE, Ahern, Inc., Defendant in this action, pursuant to the statutes and in conformance with the requirements set forth in 28 U.S.C. § 1332(a)(1), 28 U.S.C. § 1332(c)(1), and 28 U.S.C. § 1441(a), removes this action from the 164th Judicial District Court, Harris County, Texas to this Court.

Respectfully submitted,

THE SILVERA FIRM
A Professional Corporation

By: /s/ Darryl J. Silvera

Darryl J. Silvera
State Bar No. 18352280
Robert C. Turner
State Bar No. 00791831
Roy W. Horton
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served upon all counsel of record in accordance with the Rules of Civil Procedure on this 6th day of November 2020.

Owen Jones
Law Offices of Owen Jones
211 E. Parkwood
Suites 106-110
Friendswood, TX 77546
ATTORNEY FOR PLAINTIFF

Via E-Service: *owenjoneslaw@yahoo.com*

/s/ Darryl J. Silvera
DARRYL J. SILVERA

LIST OF COUNSEL

ATTORNEYS FOR PLAINTIFF

Owen Jones

State Bar No. 00796847

Federal Bar No. 20961

LAW OFFICES OF OWEN JONES

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ATTORNEYS FOR DEFENDANT

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EXHIBIT "A"

HCDistrictclerk.com

LISI, KEVIN S vs. AHERN, INC

11/4/2020

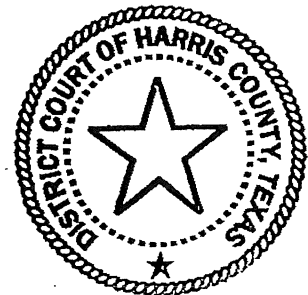
Cause: 202053150

CDI: 7

Court: 164

DOCUMENTS

| Number | Document | Post Date Jdgm | Pgs |
|----------|--------------------------------------|-------------------|-----|
| 92791081 | Defendant's Original Answer | 10/26/2020 | 4 |
| 92791083 | Defendant's Certificate of Discovery | 10/26/2020 | 2 |
| 92003570 | PLAINTIFF'S ORIGINAL PETITION | 09/02/2020 | 4 |



2020-53150 / Court: 164

CAUSE NO. _____

| | | |
|-------------|---|--------------------------|
| KEVIN LISI | § | IN THE DISTRICT COURT OF |
| | § | |
| Plaintiff | § | |
| | § | |
| v. | § | HARRIS COUNTY, T E X A S |
| | § | |
| AHERN, INC. | § | |
| | § | |
| Defendant | § | _____ JUDICIAL DISTRICT |

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Kevin Lisi, Plaintiff, hereinafter referred to as the Plaintiff, complaining of the Defendant, Ahern, Inc., hereinafter referred to as, the Defendant, and would respectfully show the Court and Jury as follows:

I. Parties

The Plaintiff resides in Harris County, Texas.

The Defendant, Ahern, Inc., is an out of state company doing business in Harris County Texas and may be served with citation through its registered agent, Inc., Corp. Services, Inc., 815 Brazos, Suite 500, Austin, Texas 78701.

II. Jurisdiction and Venue

This Court has jurisdiction over the parties because the amount sought is within the jurisdictional limits of this Court.

Venue is proper in Harris County, Texas pursuant Texas Civ. P. & Rem. C. §15.001, et. seq. because all or a substantial part of the events or omissions made the basis of this lawsuit occurred in Harris County, Texas and the Defendant does business in Harris County,

Texas.

The Plaintiff has complied with the notice requirements for the causes of action plead and all further administrative conditions precedent to the maintenance of this suit have occurred or been performed and it was necessary for the Plaintiff to hire an attorney to pursue his civil remedies against the above listed Defendant.

III. Discovery Control Plan

Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure.

IV. Facts

On or about the 30th of January, 2020 the Plaintiff began employment with the Defendant. On the 8th of July, 2020 the Defendant wrongfully terminated the Plaintiff due to him allegedly not reporting his COVID-19 symptoms and exposing the other Defendant's employees to the virus when in fact he had actually disclosed his symptoms to the Defendant earlier and was told by a health care worker that it was not the virus but allergies; upon further later testing by another health care worker the Plaintiff was told he had COVID 19 and immediately reported this to the Defendant who instructed him not to come to work and later wrongfully fired the Plaintiff due to him not reporting that he had COVID 19 when in fact he had been told by the first health care worker that he did not have the virus only allergies.

V. Liability

A. Discharge In Breach of Employment Contract

The Plaintiff incorporates the prior paragraphs as if recited verbatim herein. The Plaintiff had an enforceable contract supported by consideration with the Defendant that limited

the Defendant's right to discharge the Plaintiff that did not include contracting, reporting or in any way giving, having or not reporting anything about COVID 19 to the Defendant. There is privity of contract between the Defendant and the Plaintiff. The Plaintiff performed pursuant to the terms of the contract and the Defendant breached said contract by wrongfully terminating the Plaintiff for the reasons expressed herein causing injury to the Plaintiff for which he now sues.

VI. Damages

As a direct and proximate result of the wrongful acts and/or omissions of the Defendant, described herein and incorporated by reference made the basis of this suit, the Plaintiff has suffered past and future damages including, but not limited to:

1. Breach of Employment Contract.

VII. Attorney's Fees

It was necessary for the Plaintiff to secure the services of Owen Jones, a licensed attorney, to pursue legal remedies to collect the monies owed by the Defendant to the Plaintiff for the above listed liability pursuant to Tex. Civ. Prac. & Rem. Code § 38.001(8) breach of contract damages. The Defendant should be ordered to pay reasonable attorney's fees, expenses and costs through trial and appeal as damages incurred by the Plaintiff.

Prayer

WHEREFORE PREMISES CONSIDERED, Plaintiff asks that Defendant be cited to appear and answer and on final trial, that Plaintiff have final judgment against the Defendant for:

- i. Actual damages;
- ii. Prejudgment and postjudgment interest;
- iii. Attorney fees and court costs; and,

iv. All other relief, in law and at equity, to which the Plaintiff may be justly entitled.

Respectfully submitted,

Law Offices of Owen Jones

/s/ Owen Jones

Owen Jones

State Bar No. 00796847

Federal Bar No. 20961

211 E. Parkwood,

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Friendswood, Texas 77546

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Facsimile: (281) 996-6092

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ATTORNEY FOR PLAINTIFF

CAUSE NO. 202053150

| | | |
|-------------|---|-------------------------------------|
| KEVIN LISI, | § | IN THE DISTRICT COURT |
| Plaintiff, | § | |
| | § | |
| vs. | § | 164 TH JUDICIAL DISTRICT |
| | § | |
| AHERN, INC. | § | |
| Defendant. | § | HARRIS COUNTY, TEXAS |

DEFENDANT'S ORIGINAL ANSWER

TO SAID HONORABLE COURT:

COMES NOW, Defendant, Ahern, Inc. ("Defendant") and makes and files this, its Original Answer to Plaintiff's Original Petition and would show the following:

I.

Subject to such stipulations and admissions as may be hereafter made, Defendant hereby enters a general denial as is permitted by Rule 92 of the Texas Rules of Civil Procedure, and requests that Plaintiff be required to prove, by a preponderance of the credible evidence, the charges and allegations which Plaintiff has made against Defendant as is required by the law and the Constitution of the State of Texas.

II.

Further pleading, if necessary, and in the alternative, Defendant alleges and hereby invokes the applicable provisions of Chapter 41 of the Texas Civil Practice and Remedies Code including, but not limited to Sections 41.001; 41.002; 41.002(a), (b), (c) and (d); 41.003; 41.004; 41.006; 41.007; 41.008; 41.009; 41.010; 41.011; 41.012; and 41.013.

III.

Further pleading, if necessary, and in the alternative, Defendant asserts available defenses under Section 41.0105 of the Texas Civil Practices and Remedies Code that in addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of Plaintiff.

IV.

Further pleading, Defendant alleges it had a non-discriminatory basis for terminating Plaintiff.

V.

Further pleading, Defendant alleges it had a legitimate, non-discriminatory or non-retaliatory basis for terminating Plaintiff.

VI.

Further pleading, Defendant alleges that to the extent the Plaintiff asserts or makes any claim for punitive damages, Defendant contends a clear and convincing evidence standard applies.

VII.

Further pleading, Defendant denies the existence of an employment contract with Plaintiff. Plaintiff's employment with Defendant was at will.

VIII.

Further pleading, Defendant alleges, to the extent Plaintiff seeks recovery of any exemplary or punitive damages, they are unconstitutional as provided under the Texas Constitution including, but not limited to Articles V and VI of the Texas Constitution and the United States Constitution and applicable laws.

IX.

Further pleading, Defendant asserts and invokes any protection for applicable caps on damages provided in the Texas Civil Practice & Remedies Code and any other applicable statute or law.

X.

Further pleading, Defendant alleges Plaintiff failed to mitigate his alleged damages.

XI.

Further pleading, Defendant alleges Plaintiff's allegations he had an employment contract with Defendant has no basis in fact or law and said allegations violate Texas Rule of Civil Procedure 13 and Defendant seeks recovery of attorney fees, costs, expenses and sanctions as allowed by law.

XII.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff recover nothing of and from Defendant, that Defendant be discharged to go hence without delay and recover its costs, that Plaintiff's claims and/or causes of action be dismissed as alleged herein above, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

THE SILVERA FIRM
A Professional Corporation

By: /s/ Darryl J. Silvera

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served upon all counsel of record in accordance with the Rules of Civil Procedure on this 26th day of October 2020.

Owen Jones
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Suites 106-110
Friendswood, TX 77546

Via E-Service: owenjoneslaw@yahoo.com

/s/ Darryl J. Silvera
DARRYL J. SILVERA

CAUSE NO. 202053150

| | | |
|-------------|---|-------------------------------------|
| KEVIN LISI, | § | IN THE DISTRICT COURT |
| Plaintiff, | § | |
| | § | |
| vs. | § | 164 TH JUDICIAL DISTRICT |
| | § | |
| AHERN, INC. | § | |
| Defendant. | § | HARRIS COUNTY, TEXAS |

DEFENDANT'S CERTIFICATE OF DISCOVERY

Pursuant to Texas Rule of Civil Procedure 191.4, the below-signed hereby certifies that counsel served pursuant to the Rules of Civil Procedure, the following written discovery:

1. Defendant's Request for Disclosures to Plaintiff.

Respectfully submitted,

THE SILVERA FIRM
A Professional Corporation

By: /s/ Darryl J. Silvera

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/s/ Darryl J. Silvera

DARRYL J. SILVERA